



October 26, 2000

Ms. Lamis A. Safa  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2000-4163

Dear Ms. Safa:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 140726.

The City of Houston (the "city") received a request for numerous specified offense reports and related information. You claim that some of the responsive information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Texas Family Code states in relevant part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

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<sup>1</sup> The city has submitted five offense reports for our review. Thus, we assume that you have released the remaining responsive information to the requestor. See Gov't Code §§ 552.301, .302.

Fam. Code § 261.201(a). We believe that the offense report contained in Exhibit 4 consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the offense report contained in Exhibit 4 is confidential pursuant to section 261.201 of the Family Code. See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the city must withhold the offense report contained in Exhibit 4 in its entirety under section 552.101 of the Government Code as information made confidential by law.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. See Gov't Code §§ 552.108, .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the documents contained in Exhibit 3 relate to a pending prosecution. Because the prosecution is pending, we believe that the release of the information would interfere with the detection, investigation, or prosecution of crime. Thus, you may withhold most of the information contained in Exhibit 3 under section 552.108(a)(1).

The city also claims that some of the submitted information is excepted under section 552.108(a)(2). Information may be withheld under section 552.108(a)(2) if the information relates to a criminal investigation or prosecution that concluded in a result other than conviction or deferred adjudication. You inform this office that the subject investigations found in Exhibit 2 did not result in conviction or deferred adjudication. Consequently, we find that you may withhold most of the information found in Exhibit 2 under section 552.108(a)(2).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).<sup>2</sup> Thus, you must release the basic front page offense

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<sup>2</sup>The city also claims that the Texas driver's license numbers found in the submitted offense reports must be withheld under section 552.130 of the Government Code. We do not consider driver's license numbers to be "basic information" for the purposes of section 552.108(c). Therefore, we need not address the section 552.130 assertion.

and arrest information found in Exhibits 2 and 3.<sup>3</sup> We note that you have the discretion to release all or part of the remaining information in these exhibits that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, Exhibit 4 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the city may withhold Exhibits 2 and 3 under section 552.108 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>3</sup>You also assert section 552.103 for Exhibit 3. We need not reach this assertion because of the applicability of section 552.108, except to note that, generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/er

Ref: ID# 140726

Encl: Submitted documents

cc: Ms. Lianne Hart  
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440 Louisiana  
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(w/o enclosures)